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**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 800-2017-036221

**Oliver Strong Osborn, M.D.
1100 Larkspur Landing Circle
Suite 10
Larkspur CA 94939**

A C C U S A T I O N

**Physician's and Surgeon's Certificate
No. G 78700,**

Respondent.

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On April 20, 1994, the Medical Board issued Physician's and Surgeon's Certificate Number G 78700 to Oliver Strong Osborn, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct that would have warranted the denial of a certificate.

“(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

“(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.”

6. Section 2242 of the Code states, in pertinent part:

“(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. . . .”

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

DEFINITIONS

PERTINENT CONTROLLED SUBSTANCES/DANGEROUS DRUGS

8. Alprazolam (Xanax) is a psychotropic triazolo-analogue of the benzodiazepine class of central nervous system-active compounds. Xanax is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a Schedule IV controlled substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety Code, and a Schedule IV controlled substance as defined by Section 1308.14 (c) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022. Xanax has a central nervous system depressant effect and patients should be cautioned about the simultaneous ingestion of alcohol and other CNS depressant drugs during treatment with Xanax.

9. Diazepam (Valium) is a psychotropic drug for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in

1 section 4022 and a Schedule IV controlled substance as defined by section 11057 of the Health
2 and Safety Code. Diazepam can produce psychological and physical dependence and it should be
3 prescribed with caution particularly to addiction-prone individuals (such as drug addicts and
4 alcoholics) because of the predisposition of such patients to habituation and dependence. Valium
5 is available in 5 mg. and 10 mg. tablets. The recommended dosage is 2 to 10 mg. 2 to 4 times
6 daily.

7 10. Hydrocodone w/APAP (hydrocodone with acetaminophen) tablets are produced by
8 several drug manufacturers under trade names such as Vicodin, Norco or Lortab. Hydrocodone
9 bitartrate is a semisynthetic narcotic analgesic, a dangerous drug as defined in section 4022 of the
10 Business and Professions Code, and a schedule II controlled substance and narcotic as defined by
11 section 11055, subdivision (e) of the Health and Safety Code. Repeated administration of
12 hydrocodone over a course of several weeks may result in psychic and physical dependence. The
13 usual adult dosage is one tablet every four to six hours as needed for pain. The total 24 hour dose
14 should not exceed 6 tablets.

15 11. Indomethacin is used as an analgesic, antipyretic, and anti-inflammatory drug to treat
16 a wide range of pain and inflammatory conditions such as gout, pericarditis and several arthritis
17 conditions. Side effects include constipation as well as vasodilatory and natriuretic effects in the
18 kidney that can lead to salt and water retention, and renal failure. Indomethacin is a dangerous
19 drug as defined in section 4022 of the Business and Professions Code.

20 12. Lisinopril is an angiotensin-converting enzyme (ACE) inhibitor that prevents the
21 conversion of angiotensin I to angiotensin II which results in decreased vasopressor activity and
22 aldosterone secretion. It is used in the treatment of hypertension, congestive heart failure, diabetic
23 nephropathy, and post-myocardial infarction. Indomethacin has a serious drug interaction with
24 lisinopril. Coadministration may result in significant decrease in renal function. These two
25 medications should not be prescribed simultaneously. Lisinopril is a dangerous drug as defined in
26 section 4022 of the Business and Professions Code.

27 13. Trazodone hydrochloride, a triazolopyridine derivative antidepressant, sometimes
28 marketed under the trade name Desyrel, may enhance the response to alcohol and other CNS

1 depressants. Trazodone is a dangerous drug within the meaning of Business and Professions Code
2 section 4022.

3 14. Zolpidem tartrate (Ambien), is a non-benzodiazepine hypnotic of the imidazopyridine
4 class. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance as
5 defined by section 11057 of the Health and Safety Code. It is indicated for the short-term
6 treatment of insomnia. It is a central nervous system depressant and should be used cautiously in
7 combination with other central nervous system depressants. Any central nervous system
8 depressant could potentially enhance the CNS depressive effects of zolpidem. It should be
9 administered cautiously to patients exhibiting signs or symptoms of depression because of the risk
10 of suicide. Because of the risk of habituation and dependence, individuals with a history of
11 addiction to or abuse of drugs or alcohol should be carefully monitored while receiving zolpidem.
12 The recommended dosage for adults is 10 mg. immediately before bedtime.

13 FACTS

14 At all times relevant to this matter, Respondent was licensed and practicing medicine in
15 California.

16 PATIENT 1¹

17 15. Between 2015 and 2017, Respondent served as primary care physician for Patient 1, a
18 65+ year-old man, and saw him around six times. During that time, Patient 1 suffered chronic
19 neck and back pain, and took hydrocodone with acetaminophen and Celebrex. Respondent
20 prescribed him:

- 21 • Hydrocodone/acetaminophen for pain;
- 22 • Zolpidem for insomnia; and
- 23 • Alprazolam, for unclear reasons.

24 16. Respondent wrote hand-written prescriptions to Patient 1 for hydrocodone 5
25 mg/acetaminophen 325 mg, 60 pills, about every month, beginning in January 2015 through June
26 2018. Respondent did not obtain, or document that he obtained, informed consent from Patient 1

27 ¹ The patients are designated in this document as Patients 1 and 2 to protect their privacy.
28 Respondent knows the names of the patients and can confirm their identities through discovery.

1 regarding the risks of opioid medications, at any time during the period when Respondent
2 prescribed opioids to Patient 1. Respondent did not document each monthly prescription for
3 hydrocodone in the electronic medical records.

4 17. Respondent prescribed alprazolam to Patient 1, .5 mg., 30 pills, about once per month
5 from January 28, 2015 through October 8, 2015, and on January 28, 2016, August 15, 2016, April
6 24, 2017 and November 8, 2017. These prescriptions were not documented in the electronic
7 medical records.

8 18. Respondent gave hand-written prescriptions for zolpidem 10 mg., 30 pills, to Patient
9 1, on September 11, 2015 and February 26, 2016. These prescriptions were not documented in
10 the electronic medical records.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct: Repeated Negligent Acts and/or Incompetence and/or Prescribing**
13 **without Appropriate Prior Exam/Medical Indication Regarding Patient 1, and Inadequate**
14 **Medical Recordkeeping)**

15 19. Respondent, Oliver Strong Osborn, M.D., is subject to disciplinary action for
16 unprofessional conduct under sections 2234(c), and/or 2234(d), and/or 2242, and/or 2266, in that
17 Respondent's overall conduct, acts and omissions, with regard to Patient 1 constitute repeated
18 acts of negligence and/or incompetence and/or prescribing without an appropriate prior
19 examination or medical indication, and inadequate medical recordkeeping, as more fully
20 described herein below.

21 20. Complainant incorporates paragraphs 15-18 as though fully set forth.

22 21. The standard of care for prescribing opioid medication to a patient requires that a
23 physician must inform the patient of the risks of opioid medication and obtain the patient's
24 informed consent. The standard of care requires that a physician maintain accurate and complete
25 medical records documenting, among other things, that informed consent has been obtained
26 regarding the risks and benefits of a treatment plan involving opioid medication, and that the
27 prescriptions be documented in the medical records.

22. From 2015-2017, Respondent failed to inform or document that he discussed the risks of opioid medication with Patient 1.

23. Respondent failed to discuss or document that he had obtained informed consent from Patient 1, in regard to the risks and benefits of opioid medication.

24. From 2015-2018, Respondent wrote monthly handwritten prescriptions to Patient 1 for hydrocodone without documenting them in the electronic medical records.

25. The standard of care for safe benzodiazepine and sedative-hypnotic prescribing includes having an adequate history and physical examination, an assessment and treatment plan with objectives, informed consent regarding the risks and benefits of the treatment plan and accurate medical records documenting these elements.

26. Respondent did not take or document an adequate history regarding the need for Patient 1 to take benzodiazepine and sedative-hypnotic medications. Respondent did not have or document an assessment and treatment plan for either anxiety or insomnia. Respondent did not obtain informed consent from Patient 1 regarding the risks of simultaneous prescriptions for zolpidem and alprazolam.

27. Respondent failed to document the refills of alprazolam and zolpidem in the medical records.

PATIENT 2

28. Patient 2 was a retired 63+ year-old gentleman, who used to drive a truck, delivering newspapers. Respondent was Patient 2's primary care physician and saw him around nine times between April 2015 and November 2017. Respondent prescribed Patient 2 medications including hydrocodone/acetaminophen and indomethacin. Patient 2 had a history of alcoholism, anemia since 2006, hypertension (on lisinopril), hyperlipidemia, prostate cancer, epileptic disorder on Depakote, gout, and arthritis. Patient 2 smoked 2 packs of cigarettes per day.

29. Patient 2 used the indomethacin episodically for gout. In November 2015 Respondent warned Patient 2 that indomethacin was fine for occasional use but not for regular chronic use. In 2016 Respondent tapered Patient 2 off hydrocodone with acetaminophen and prescribed Patient 2 more indomethacin than previously for pain.

1 30. In July 2016 Patient 2 was seen in an emergency department for acute renal failure.
2 He was hypotensive. His serum transaminases and alkaline phosphatase were elevated, and his
3 magnesium level was low. A past history of alcohol abuse was noted but blood alcohol level was
4 non-detectable. Patient 2 however reported a recent "two day EtOH bender."

5 31. Respondent increased the amount of indomethacin he prescribed to Patient 2, so that
6 from late 2015 through July 2017, Respondent was prescribing at least 60 pills per month. In June
7 and July of 2017, Respondent prescribed 60 indomethacin pills every 2 weeks. Respondent's last
8 prescription for indomethacin to Patient 2 was on July 18, 2017.

9 32. In February of 2017, Respondent recommended that Patient 2 take Aleve² for cervical
10 nerve root pain. At that time, Patient 2 was also taking indomethacin.

11 33. In June of 2017 Respondent "scribed" trazodone, after Patient 2 had called and asked
12 for a prescription for something to help with sleep. The trazodone dose was increased from 50 mg
13 to 100 mg at bedtime later in June, 2017. Insomnia was never listed as an active problem for
14 Patient 2 in the Respondent's electronic medical records, and the record contains no assessment
15 or evaluation of the patient's complaint of insomnia

16 34. On August 14, 2017 Respondent saw Patient 2 for a chief complaint of constipation,
17 but Respondent wrote that Patient 2 was not feeling well overall. Patient 2's blood pressure was
18 extremely elevated at 210/110. Respondent ordered labs, and told Patient 2 to stop using
19 indomethacin. Respondent wrote in the records that he warned Patient 2, regarding the
20 indomethacin: "it's going to kill you if you stay on it."

21 35. In November of 2017 Patient 2 had severe stress and Respondent prescribed him a
22 small amount of diazepam for 3 months. The first prescription for diazepam was a telephone
23 order with instructions to take "1-2 tabs BID prn anxiety." The second prescription for diazepam
24 was a typed prescription signed by Respondent with instructions to take "1-2 tabs BID prn
25 anxiety." The third prescription for diazepam was a typed prescription signed by Respondent

26 _____
27 ² Aleve is an over-the-counter non-steroidal anti-inflammatory medication, the generic
28 name for which is naproxen sodium. Naproxen is used to relieve pain from conditions such as
headache, muscle aches, and tendonitis. It also reduces pain, swelling, and joint stiffness caused
by arthritis, bursitis, and gout attacks.

1 with the following instructions: "Take 1 tab daily if needed for anxiety. 30 pills must last 30
2 days."

3 36. Respondent wrote the first trazodone prescription to Patient 2 in June, 2017 for 50 mg
4 at bedtime. Prescriptions for trazodone later in 2017 provided Patient 2 with up to a 90-day
5 supply at a time, with instructions to take two 50 mg tablets at bedtime.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct: Gross Negligence and/or Incompetence and/or Prescribing**
8 **without Appropriate Prior Exam/Medical Indication Regarding Patient 2, and Inadequate**
9 **Medical Recordkeeping)**

10 37. Respondent, Oliver Strong Osborn, M.D., is subject to disciplinary action for
11 unprofessional conduct under sections 2234(c), and/or 2234(d), and/or 2242, and/or 2266, in that
12 Respondent's overall conduct, acts and omissions, with regard to Patient 2 constitute repeated
13 acts of negligence and/or incompetence and/or prescribing without an appropriate prior
14 examination or medical indication, and inadequate medical recordkeeping, as more fully
15 described herein below.

16 38. Complainant incorporates paragraphs 28-36 as though fully set forth.

17 39. The standard of care requires that physicians prescribe drugs safely, while being
18 aware of potential interactions between drugs and side effects. The standard of care also requires
19 that physicians warn patients of the risks of prescribed medications with their patients.

20 40. Prescribing indomethacin in combination with lisinopril showed a lack of knowledge
21 on the part of Respondent.

22 41. During 2016-2017, Respondent failed to inform Patient 2 of the risks of chronic
23 indomethacin use, including renal failure.

24 42. During 2016-2017, Respondent did not inform, or did not document having informed,
25 Patient 2 of the risks of combining indomethacin and lisinopril.

26 43. During 2016-2017, Respondent did not inform or document any discussion with
27 Patient 2 about the risks of combining Aleve with indomethacin.
28

1 44. During 2016-2017, Respondent prescribed Patient 2 trazodone without obtaining or
2 documenting informed consent regarding possible side effects of trazodone.

3 45. During 2016-2017, Respondent issued ongoing prescriptions of trazodone without
4 periodic review regarding the need for, effectiveness or occurrence of side effects with, the
5 medication.


6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Medical Board of California issue a decision:

- 9 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 78700,
10 issued to Oliver Strong Osborn, M.D.;
- 11 2. Revoking, suspending or denying approval of Oliver Strong Osborn, M.D.'s authority
12 to supervise physician assistants and advanced practice nurses;
- 13 3. Ordering Oliver Strong Osborn, M.D., if placed on probation, to pay the Board the
14 costs of probation monitoring; and
- 15 4. Taking such other and further action as deemed necessary and proper.

16
17 DATED:

18 August 13, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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